THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 16808 of 1999

Date:26-09-2007

Between:

Thota Yellaiah

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Petitioner

AND

The Mandal Revenue Officer, Bhiknoor and two others.

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Respondents

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ORDER:

The petitioner seeks a writ of certiorari calling for the records relating to the proceedings No.A2/1241/98, dated 01.11.1998 issued by the Mandal Revenue Officer, Bhiknoor and the order No.A6/5284/98, dated 30.03.1999 issued by the Revenue Divisional Officer, Kamareddy and quash the same and consequently declare that the petitioner is entitled for absolute possession and enjoyment of land admeasuring Ac.04.25 guntas situated in Sy.No.972 of Bhiknoor village.

It is the case of the petitioner that he is the owner and possessor of the agricultural land bearing Sy.No.972 admeasuring Ac.4.25 guntas situated at Bhiknoor shiwar and he has been cultivating the said land by himself and his predecessors-in-title more than 70 years without any interruption whatsoever.

While so, the Mandal Revenue Inspector, Bhiknoor submitted a report stating that the petitioner encroached an extent of
land of Ac.0-10 guntas in Sy.No.973 in the year 1998 and thereafter the land was demarcated by the surveyor and found that the petitioner encroached an extent of land of Ac.0-12 guntas of Papanikunta shikam situated at Bhiknoor village and mandal. Based on the said report of the mandal surveyor, the Mandal Revenue Officer issued a notice under Section 7 of the A.P. Land Encroachment Act, 1905 (for short "the Act") calling upon the petitioner to submit an explanation as to why he should not be evicted. Pursuant to the said show cause notice, dated 13.08.1998,the petitioner submitted an explanation on

19.08.1998 to demarcate his land owned by him stating that he has not encroached any land and if there is any excess area, there cannot be any objection to take back the same. It is stated that without considering the said explanation, dated 19.08.1998, the Mandal Revenue Officer, Bhiknoor passed the order based on the report of the mandal surveyor, dated 27.10.1998 reporting that the petitioner has encroached an extent of Ac.0-12 guntas and accordingly ordered for eviction of the petitioner from the said encroached land of Ac.0-12 guntas in Sy.No.973 under Section 6 of the Act.

Aggrieved by the said order of the Mandal Revenue Officer, dated 02.11.1998 in Proceedings No.A2/1241/98, the petitioner filed an appeal before the Revenue Divisional Officer and the Revenue Divisional Officer by order, dated 30.03.1999 in Proceedings No.A6/5284/98 dismissed the appeal.

It is the case of the petitioner that the respondents never surveyed the land of the petitioner and he never in possession of any excess land other than the land of Ac.4.25 guntas possessed by him. But, without making any survey and without making availability of the survey report, based upon the alleged survey report said to have been filed by the surveyor, the respondents came to the conclusion that the petitioner has encroached upon the sikham land of an extent of Ac.0-12 guntas.

There is no dispute that the petitioner is the owner of the land of an extent of Ac.4.25 guntas in Sy.No.972. Whereas, the land said to have been encroached by the petitioner is in Sy.No.973. Whether the entire land of the petitioner situated in Sy.No.972 admeasuring Ac.4.25 guntas is surveyed or not, is not at all stated by any of the revenue officials. Therefore, I am of the opinion that without considering the explanation submitted by the petitioner to survey the land, the

respondents have taken action based on the report of the surveyor without supplying the same to the petitioner.

Accordingly, the writ petition is allowed setting aside the impugned orders and the matter is remanded to the 1st respondent/Mandal Revenue Officer, Bhiknoor directing him to survey the land of the petitioner of an extent of Ac.4.25 guntas in Sy.No.972 and pass appropriate orders for eviction of the petitioner if he is found by encroaching any extent of land in Sy.No.973, in accordance with law. No costs.

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V.ESWARAIAH, J.

Date:26.09.2007
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